Supreme Court, U. S.
FILED
JAN 10 1978
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-242

TELEPHONE COORDINATING COUNCIL TCC-1,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
JAMES D. HODGSON, SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,
UNITED STATES OF AMERICA,
AMERICAN TELEPHONE AND TELEGRAPH COMPANY, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF OF RESPONDENTS AMERICAN TELEPHONE AND TELEGRAPH COMPANY *ET AL.* TO SUPPLEMENTAL BRIEF FOR PETITIONER

THOMPSON POWERS
JANE MCGREW
MORGAN D. HODGSON
STEPTOE & JOHNSON
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 862-2000

Attorneys for American Telephone & Telegraph Company, et al., Respondents

Of Counsel:

JAMES A. DEBOIS
AMERICAN TELEPHONE & TELEGRAPH COMPANY
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(201) 221-6550

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In its most recent brief, petitioner Telephone Coordinating Council TCC-1, International Brotherhood of Electrical Workers ("IBEW" hereinafter) urges further support for its petition in the two recent decisions of the Fifth Circuit: *Weber v. Kaiser Aluminum & Chemical Corporation,* 563 F.2d 216 (1977),[1] and *United States v. East Texas Motor Freight System, Inc.,* 564

[1] Petitions for Rehearing *en banc* will be filed in the *Weber* case by Kaiser and by the intervenor, EEOC, on January 15, 1978.

F.2d 179 (1977). Relying on those cases, IBEW reargues its contention that the "override" remedy provided by the consent decree in this case was improper because it provides seniority relief to persons who were not identifiable victims of discrimination.

AT&T has previously refuted this argument in its Brief in Opposition to IBEW's Petition for Writ of Certiorari. The two Fifth Circuit opinions alter neither the Company's position nor the correctness of the decision of the Third Circuit in this case.

First, IBEW ignores the factual basis for the *Weber* decision: the district court found in that case that there was *no evidence of past discrimination.* 415 F. Supp. 761, 764 (E.D. La. 1976). Although this finding was disputed by the dissenter from the opinion on appeal, the panel majority upheld the trial court's decision enjoining a voluntary agreement entered into by Kaiser providing for a minority quota in selecting employees for a craft training program because of the "absence of prior discrimination." 563 F.2d at 224. Accordingly, the district court (and the Fifth Circuit) proceeded to evaluate the program from an entirely different premise than did the district court (and the Third Circuit) in this case. Here, the district court, in light of the evidence before it, including the voluminous record in the Federal Communications Commission proceeding, explicitly accepted as true the allegations of across-the-board discrimination against AT&T and its operating companies. 419 F. Supp. 1022, 1039-1040 (E.D. Pa. 1976).

The *East Texas* case also arose in a different posture. It was a fully litigated case, much like *International Brotherhood of Teamsters v. United States,* 431 U.S. 324 (1977). In addition, the relief provided was a comprehensive seniority remedy intended to eliminate the past effects of an allegedly discriminatory seniority system. Each of these facts presents a critical distinction from the *AT&T* case. First, for the reasons stated in the Company's Brief in Opposition,[2] the order of proof set up by this Court in *Teamsters* is inapposite in a settlement context. Once again, IBEW is trying to force the consent decree into an improper mold.

Moreover, the "override" aspect of the decree constitutes prospective class relief intended to achieve the prophylactic objectives of Title VII. It is not designed to provide "make

[2] Brief in Opposition at 13-14.

whole" relief for any particular individual. In that respect, too, it differs from the relief initially formulated in *East Texas,* where retroactive seniority relief was awarded to individual employees who were presumed to have been discriminated against by an unlawful seniority system. Under the AT&T decree, the seniority system was not challenged,[3] and no beneficiary of the override obtains constructive seniority for any future purpose.

Finally, the instant case does not present a conflict with the Fifth Circuit's interpretation of Executive Order 11246 since the remedy here was properly fashioned pursuant to the district court's equitable powers under Title VII.

In light of the foregoing, AT&T respectfully submits that the decisions of the Fifth Circuit provide no new reasons to support IBEW's petition in this case and detract in no way from AT&T's position that the petition should be denied.

Respectfully submitted,

THOMPSON POWERS
JANE MCGREW
MORGAN D. HODGSON
STEPTOE & JOHNSON
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Washington, D.C. 20036
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[3] 419 F. Supp. at 1037.